

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

BROOKA STOKES

Plaintiff,

vs.

Civil Action No. 3:06 CV1135-T

CITIFINANCIAL a/k/a

WASHINGTON MUTUAL FINANCE;

GLEND A DUNCAN; and A, B, C, and/or D

being those persons, firms, corporations,

partnerships, or other entities responsible for

failure to satisfy the debt upon payment by

the Plaintiff; E, F, and/or G and those persons,

firms, corporations, partnerships, or other

entities responsible for notifying any and all

Credit Bureaus of the existence of the debt

which had been paid; G, H, and/or I and those

parties responsible for the acts complained of

herein, whose identities are otherwise unknown,

but who will be added by amendment when

ascertained,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO STAY ACTION
PENDING RESOLUTION OF DEFENDANT CITIFINANCIAL, INC.'S PETITION
FOR ORDER COMPELLING ARBITRATION AND MEMORANDUM
IN SUPPORT THEREOF

COMES NOW, the Plaintiff, **Brooka Stokes**, in the above styled cause, by and through her undersigned counsel, and files this, the Plaintiff's Response to the Defendant's Motion to Stay.

1. The Plaintiff disputes the factual contentions set forth in the Defendant's Motion to Stay. That arbitration agreement pertains to a separate transaction, not the one at issue.

2. The Motion to Stay does **not** reflect the fact that Mrs. Stokes has filed a Motion to Remand this matter back to the State Court of Lee County, Alabama.

3. Mrs. Stokes contends that this matter should be remanded back to the Circuit Court of Lee County, Alabama as Glenda Duncan is a non-diverse Defendant in action. Mrs. Stokes has brought state claims against Glenda Duncan, precluding diversity jurisdiction.


“A defendant seeking to prove that a co-defendant was fraudulently joined must demonstrate either that: ‘(1) there is no possibility the plaintiff can establish a cause of action against the resident defendant; or (2) the plaintiff has fraudulently pled jurisdictional facts to bring the resident defendant in state court.’” *Crowe v. Coleman*, 113 F.3d 1536, 1538 (11th Cir. 1997).

Therefore, the Motion to Stay this action is premature. Until the Court determines whether or not this matter should stay in the District Court for the Middle District of Alabama Eastern Division, or whether it should be remanded back to the State Court, a determination as to whether this matter should be stayed is not necessary.

If, however, this honorable Court does deny the Motion to Remand and determines that this case should remain in the District Court for the Middle District of Alabama Eastern Division, then it would be appropriate that the Court enter an Order staying this action pending resolution of Defendant Citifinancial Inc.’s Petition for Order Compelling Arbitration.

WHEREFORE PREMISES CONSIDERED, the Plaintiff respectfully moves this Court to enter an Order remanding this action back to the Circuit Court of Lee County, Alabama where the State law claim against Glenda Duncan can be determined on its merits.

Respectfully submitted,


JEFFREY G. TICKAL (TIC001)
Attorney for the Plaintiff, Brooka Stokes

OF COUNSEL:

GULLAGE & TICKAL, LLP
511 Geneva Street
PO Box 711
Opelika, AL 36803-0711
334-737-3733
334-737-3766 fax

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion upon the following by depositing a copy of the same in the United States Mail, postage prepaid and properly addressed on this the 29th day of January, 2007.

Alan D. Leeth, Esq.
BURR & FORMAN, LLP
3100 Wachovia Tower
420 North 20th Street
Birmingham, AL 35203


JEFFREY G. TICKAL